

109TH CONGRESS  
2D SESSION

# S. 2655

To amend the Truth in Lending Act, to prohibit universal default practices by credit card issuers, to limit fees that may be imposed on credit card accounts, and to require credit card issuers to verify a prospective consumer's ability to pay before extending credit to the consumer, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 26, 2006

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Truth in Lending Act, to prohibit universal default practices by credit card issuers, to limit fees that may be imposed on credit card accounts, and to require credit card issuers to verify a prospective consumer's ability to pay before extending credit to the consumer, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Credit Card Reform  
5       Act of 2006”.

1 **SEC. 2. PROHIBITION ON UNIVERSAL DEFAULT AND UNI-**  
 2 **LATERAL CHANGES TO CARDHOLDER AGREE-**  
 3 **MENTS.**

4 Chapter 4 of the Truth in Lending Act (15 U.S.C.  
 5 1666 et seq.) is amended—

6 (1) by redesignating section 171 as section 173;

7 and

8 (2) by adding at the end the following:

9 **“§ 171. Universal defaults prohibited**

10 “(a) IN GENERAL.—No credit card issuer may use  
 11 any adverse information concerning any consumer, includ-  
 12 ing any information contained in any consumer report (as  
 13 defined in section 603) or any change in the credit score  
 14 of the consumer, as the basis for increasing any annual  
 15 percentage rate of interest applicable to a credit card ac-  
 16 count of the consumer under an open end consumer credit  
 17 plan, or to remove or increase any introductory annual  
 18 percentage rate of interest applicable to such account.

19 “(b) EXCEPTION.—The limitation under subsection  
 20 (a) shall not apply to—

21 “(1) a credit card issuer that increases an an-  
 22 nual percentage rate of interest in accordance with  
 23 a credit card agreement that provides for rate  
 24 changes according to changes in an index or for-  
 25 mula; or

1           “(2) the removal or increase in an introductory  
2           annual percentage rate of interest applicable to the  
3           usage or payment of such account because of actions  
4           or omissions of a consumer that are directly related  
5           to such account.

6           “(c) NOTICE TO CONSUMER.—The limitation under  
7           subsection (a) on the use of adverse information by a cred-  
8           it card issuer shall be clearly and conspicuously described  
9           to the consumer by the credit card issuer in any disclosure  
10          or statement required under subsection (a) or (b) of sec-  
11          tion 127.

12          “(d) UNILATERAL CHANGES IN CREDIT CARD  
13          AGREEMENT PROHIBITED.—

14               “(1) IN GENERAL.—No credit card issuer may  
15               amend or change the terms of a credit card contract  
16               or agreement under an open end consumer credit  
17               plan, unless the consumer has provided specific writ-  
18               ten consent, in a separate document signed or ini-  
19               tiated by the consumer, to the change or amendment  
20               of such terms.

21               “(2) AUTHORITY TO PAYOFF BALANCES.—A  
22               cardholder shall have the right to repay all existing  
23               balances under the terms in effect when the balances  
24               were incurred.

1           “(3) CONSTRUCTION.—Termination of an ac-  
 2           count due to failure to agree to a change in terms  
 3           shall not constitute a default under an existing card-  
 4           holder agreement, and shall not trigger an obligation  
 5           to immediately repay the obligation in full.”.

6   **SEC. 3. CAP ON FEES CHARGED BY CREDITORS.**

7           (a) IN GENERAL.—Chapter 4 of the Truth in Lend-  
 8           ing Act (15 U.S.C. 1666 et seq.) is amended by adding  
 9           at the end the following:

10   **“§ 172. Limitations on late payment fees and other**  
 11                           **adverse consequences**

12           “(a) IN GENERAL.—If a late payment fee is to be  
 13           imposed with respect to a credit card account under an  
 14           open end consumer credit plan due to the failure of the  
 15           consumer to make payment on or before a required pay-  
 16           ment due date, the credit card issuer shall state clearly  
 17           and conspicuously on the billing statement—

18                   “(1) the date on which the payment must be  
 19           postmarked, if paid by mail, or by the date on which  
 20           a consumer initiates a payment using an electronic  
 21           fund transfer (as defined under section 903 of the  
 22           Electronic Fund Transfers Act), in order to avoid  
 23           the imposition of a late fee with respect to the pay-  
 24           ment; and

1           “(2) the amount of the late payment fee to be  
2           imposed if payment is postmarked after such date.

3           “(b) LIMITATION.—No card issuer may, with respect  
4 to a credit card account under an open end consumer cred-  
5 it plan, impose a late payment fee, raise the annual per-  
6 centage rate on the credit card account for late payment,  
7 or impose other adverse consequences for late payment if  
8 the cardholder’s payment is postmarked on or before the  
9 required postmark date stated in accordance with sub-  
10 section (a)(1).

11          “(c) CAP ON FEES.—The amount of any fee or  
12 charge that a credit card issuer may impose in connection  
13 with any default, omission, or violation of the cardholder  
14 agreement, including any late payment fee, over the limit  
15 fee, increase in the applicable annual percentage rate of  
16 interest, or any similar fee or charge, may not exceed an  
17 amount that is reasonably related to the cost to the card  
18 issuer of such default, omission, violation, or similar  
19 event.”.

20          (b) CONFORMING AMENDMENT.—Section 127(b) of  
21 the Truth in Lending Act (15 U.S.C. 1637(b)) is amended  
22 by striking paragraph (12).

23          (c) CLERICAL AMENDMENT.—The table of sections  
24 for chapter 4 of the Truth in Lending Act (15 U.S.C.

1 1666 et seq.) is amended by inserting after the item relat-  
 2 ing to section 170 the following new items:

“171. Universal defaults prohibited.

“172. Cap on fees.”.

3 **SEC. 4. VERIFICATION OF ABILITY TO PAY CREDIT OBLIGA-**  
 4 **TIONS.**

5 Section 127 of the Truth in Lending Act (15 U.S.C.  
 6 1637) is amended by adding at the end the following:

7 “(h) VERIFICATION OF ABILITY TO PAY.—

8 “(1) IN GENERAL.—A credit card issuer may  
 9 not open any credit card account for any person  
 10 under an open end consumer credit plan, or increase  
 11 any credit limit applicable to such an account, unless  
 12 the credit card issuer has determined, at the time at  
 13 which the account is opened or the credit limit in-  
 14 creased, that the consumer will be able to make the  
 15 scheduled payments under the terms of the trans-  
 16 action, based on a consideration of their current and  
 17 expected income, current obligations, and employ-  
 18 ment status.

19 “(2) REGULATIONS.—The Board shall pre-  
 20 scribe, by regulation, the appropriate formula for de-  
 21 termining the ability of a consumer to pay and the  
 22 criteria to be considered in making any such deter-  
 23 mination for purposes of this subsection.

1           “(3) PROHIBITIONS.—The Board, by regulation  
 2           or order, shall prohibit acts or practices in connec-  
 3           tion with any credit card account under an open end  
 4           consumer credit plan—

5                   “(A) that the Board finds to be unfair, de-  
 6                   ceptive, or designed to evade the provisions of  
 7                   this title; and

8                   “(B) that the Board finds to be associated  
 9                   with abusive lending practices, or that are oth-  
 10                  erwise not in the interest of the consumer.”.

11 **SEC. 5. EFFECTIVE DATES.**

12           The amendments made by this Act shall take effect  
 13   6 months after the date of enactment of this Act, except  
 14   that the Board shall begin to propose such regulations as  
 15   may be appropriate to implement such amendments on or  
 16   after the date of enactment of this Act.

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